

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Writ Petition No. 295 of 2006 (S/B)

Date of decision: 15th March, 2007

A.F.R. (Approved for Reporting)

~~Not Approved for Reporting~~

Date

Initials of Judge

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge of signature.

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ petition No. 295 (S/B) of 2006

D.D.Dimri s/o Late Sri M.D.Dimri
at present posted as Superintending Engineer,
Uttaranchal Jal Sansthan, Tehri/
Secretary Appraisal Dehradun,
District Dehradun Petitioner

Versus

1. U.P. State Public Services Tribunal,
Indira Bhawan, Lucknow.
2. State of U.P. through Secretary,
Nagar Vikas Anubhag - 3,
Civil Secretariat, Lucknow.
3. Secretary, Pey Jal
Government of Uttaranchal, Dehradun,
District Dehradun.
4. Naresh Chandra Atri,
Superintending Engineer/General Manager (Officiating),
Uttaranchal Jal Sansthan, Nainital, District Nainital.
5. Uttaranchal Jal Sansthan
through Chief General Manager,
Jal Bhawan, Dehradun,
District Dehradun Respondents
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Sri Lalit Sharma Advocate for the petitioner.
Smt. Been Pande, Standing Counsel (U.P.Govt.) for respondents 1 and 2.
Sri N.C.Gupta, Standing Counsel for respondent no. 3.
Sri A. Rab, Advocate for respondent no. 4.
None for respondent no. 5.

JUDGMENT

**Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble J.C.S.Rawat, J.**

RAJEEV GUPTA, C. J. (Oral)

Petitioner D.D. Dimri has filed this writ petition for the following reliefs:

- “I. Issue a writ, order or direction in the nature of certiorari quashing the judgment and order dated 26.7.2004 passed by the U.P. State Public Service Tribunal, Lucknow in Claim petition No. 244 of 1997 (Annexure No. 1) as well as the Government Order dated 28.04.2006 passed by the Secretary Nagar Vikas

Anubhag Govt. of U.P. Lucknow (Annexure No.2) passed pursuant to the order of the Tribunal dated 26.07.2004.

- II. Issue any suitable writ, order or direction which this Hon'ble Court may deem fit and proper on the basis of the facts and circumstances of the case.
- III. Award the cost of the petition to the petitioner."

2. Thus, the petitioner, in substance, is seeking quashing of the impugned judgment dated 26.07.2004 passed by Lucknow Bench of U.P. State Public Services Tribunal in Claim Petition No. 244 of 1997.

3. Sri N.C.Gupta, the learned Standing Counsel and Sri A.Rab, the learned counsel for respondent no. 4, have raised a preliminary objection our the maintainability of the writ petition on the ground that as the impugned judgment dated 26.07.2004 was passed by Lucknow Bench of Uttar Pradesh State Public Services Tribunal, the High Court of Uttarakhand has no jurisdiction to entertain the writ petition against the said judgment.

4. The Apex Court, in the case of **L. Chandra Kumar Vs. Union of India and others** reported in **(1997) 3 SCC 261**, observed in para 99:

"99. In view of the reasoning adopted by us, we hold that clause 2(d) of Article 323-A and clause 3(d) of Article 323-B, to the extent they exclude the jurisdiction of the High Courts and the Supreme Court under Articles 226/227 and 32 of the Constitution, are unconstitutional. Section 28 of the Act and the "exclusion of jurisdiction" clauses in all other legislations enacted under the aegis of Articles 323-A and 323-B would, to the same extent, be unconstitutional. The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is a part of the inviolable basis structure of our Constitution. While this jurisdiction cannot be ousted, other courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution. The Tribunals created under Article 323-A and Article 323-B of the

Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the Tribunal concerned falls. The Tribunals will, nevertheless, continue to act like courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the virus of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated.

5. From the above quoted dictum of the Apex Court in the case of **L. Chandra Kumar Vs. Union of India and others** (Supra), it becomes apparent that all the decisions of the Tribunal would be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction, the Tribunal concerned falls.

6. As the impugned judgment dated 26.07.2004 has been passed by a Tribunal, which is not situated within the territorial jurisdiction of the High Court of Uttarakhand, the present writ petition is, apparently, not maintainable. The petitioner's apprehension that the impugned judgment dated 26.07.2004, when implemented, would adversely affect the interest of the petitioner, who is posted in the State of Uttarakhand, would not confer jurisdiction on the High Court of Uttarakhand to entertain a writ petition challenging the judgment passed by the Tribunal, which is not situated within the State of Uttarakhand.

7. The writ petition, therefore, is liable to be dismissed and is hereby dismissed summarily.

(J.C.S.Rawat , J.)
15.03.2007

(Rajeev Gupta, C. J.)
15.03.2007

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